IN THE

Supreme Court of the United States

OCTOBER TERM, 1924

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY
vs.
THE UNITED STATES
} No. 29

MOTION FOR ORAL ARGUMENT

This appeal, having been dismissed by the court on October 7th, 1924, because appellant had not been able to make the preparations for a hearing, was reinstated the same day to be heard on a brief filed for appellant within thirty days from that date. There had been decided on May 26, 1924, a case of the *Illinois Central Railroad Company*, 265 U. S. 209, and in a brief filed herein for the United States it was insisted that the case was ruled by that decision and others cited, and reference was made to a case of the *Chicago, Milwaukee & St. Paul Railway Company*, No. 83, of the present term, as being parallel with this case and with the Illinois Central case.

There is some similarity, though not identity, between the Chicago, Milwaukee & St. Paul and Illinois Central cases. The former of these is set for hearing

on November 17th, 1924. The instant case presents a question which does not occur in either of those, and has no relation whatever to anything involved in either of them and is absolutely novel in this court, and, on the remaining questions presented, there is nothing to associate the case with the other case beyond the fact that coals, for use on Government improvements, were transported over land-aided railroads; the stipulations between the Government and its vendors, regarding places of delivery and of payment for the supplies, and some other provisions in the contracts, being radically different from those of the Illinois Central case.

It is submitted that, especially on the first issue here referred to, appellant, while presenting now and filing its brief, is not able thereby to make an adequate presentation of the case. It therefore moves that, upon submission of this case on the 16th day of November, or at any time in said month preceding the 17th, consideration of it by the court be deferred until that day and the time due to appellant for argument of the Chicago, Milwaukee & St. Paul case be divided by appellant so that he may devote a minor part thereof to the instant case.

BENJAMIN CARTER,
Attorney for Appellant.

COPY.

Benjamin Carter,
Attorney and Counselor at Law,
1400 H Street, N. W.,
Washington, D. C.

December 6, 1924.

In re Louisville & Nashville Railroad Company vs. United States No.29.

The Chief Justice of the United States
Supreme Court,
Washington, D. C.

Sir:

This case, heard by the court on the 4th instant., amounts to two suits. Also a case of the Chicago, Milwaukee & St. Paul Railway Co., heard at the same time, was in effect two suits. I write now especially of that part of the Louisville & Nashville case which relates to exemption from charges for switching cars and chuting coal at Mobile and Pensacola. This was absolutely new matter to the court; and it got the benefit of barely twenty minutes of the one hour allowed to the four controversies.

A lawyer of the highest prowess, in sound health, could hardly have made the issue clear to the court in that little time. I am sure that, in some important details, I did not; and I have the honor to advise you that in a very few days I shall ask leave to make a motion for a remand of the case for a half hour's re-argument on this branch--the Government, if its attorneys desire, also to be heard.

Some of the matters calling for clarification are:

1. The identity of the coals for which the Government refused to pay the terminal charges with the coals (the subject of the other branch of the suit) which were purchased by engineers of the Army or Navy, viz: Colonel Keller, Major Schulz, Major Brown, Captain Sturdevant, Major Johnson, and Assistant Paymaster Bearfind, as bearing on the uses which were to be made, and were made, of the coals stopped and cuted so that distinction may clearly be made between (a) exports or bunkerage for ship use and (b) domestic uses, coastwise or others.

2. Appellant's compensation to be recovered if the Government, being entitled to the land-grant rates for transportation on a part of the haul, was not entitled to exemption from the switching and chuting charges.

3. Appellant's compensation to be recovered if the Government, not being entitled to land-grant deductions on said haul, was entitled to exemption from the switching and chuting charges.

4. The character and uses of the switching and hoisting

appliances, so as to determine whether, upon the question of lawful discrimination, they fall under Section 2 or Section 3 of the Act of Congress of February 4, 1887, Chapter 104, 24 Stat. 379, 380.

5. Validity of a tariff, or of free service, restricted to export coals as against coals for domestic use.

Very respectfully,

(Signed) Benj. Carter.

Copy to the Solicitor General, Washington, D. C., for attention of Mr. Blackburn Esterline.

OFFICE OF THE CLERK
RECEIVED
MAY 11 1925
SUPREME COURT U. S.

IN THE

Supreme Court of the United States

October Term, 1924

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY
v.
THE UNITED STATES
} No. 29

MOTION OF APPELLANT FOR RE-HEARING

Appellant, showing to the court that a judgment was rendered by this court, with an opinion, on the 2nd day of March, 1925, affirming a decision of the Court of Claims by which the petition was dismissed, moves that a re-hearing of the case be granted. For its reasons it says:

Beside one question relative to a part only of the moneys claimed there were two questions before and decided by the Court of Claims, and presented to this court, relative to an alternative amount claimed, and this court decided one but omitted to decide the other of said two questions; and therefore appellant is exposed to the application of said unfavorable judgment, and to large abridgement of its revenues, by disbursing officers of the United States, or by other shippers, on

transactions which were in no way concerned with said decided question but do present the undecided question.

BRIEF

The first concern of appellant's counsel, undersigned, is to assure the court that this application for a re-hearing would not be made if the court, by its silence upon one capital question, had not given pseudo-authority, with respect both to Government shipments and to private shipments, for a practice of which the suit complains.

One question before this court, which was decided and is discussed in the opinion, is the ownership of coal and other materials for Government uses which while in transit to points of use were under the dominion of the shippers (sellers), and which were subject to inspection and final acceptance or rejection after the shipment terminated. The present motion has no relation to that question. Another and distinct question was whether land-grant allowances received by the Government should be counted as the equivalent of cash so as to satisfy a condition in the special tariffs concerned that appellant's revenue from shipments of coal should be one dollar or more per ton before shippers should be entitled to free spotting or cars and chuting of the coal at the seaports. New consideration of that question is not requested; it is referred to here solely to make it clear that the court puts the Government on the same footing with private owners, who must pay the full tariff rates in cash. The one matter which this motion presents to the court is a second condition of the tariff referred to, viz: that the spotting and hoisting should be steps in the export of coals—that there should be no waiver

of these terminal charges on coals moving coastwise, for engineering or other uses.

The coals here in question, as found by the court, were for engineering uses along the Mississippi Sound or in Mobile River. None of them, by any stretch of the word, were for export.

Coal producers in Alabama send large quantities of coal by rail to Mobile and Pensacola and thence, by ship, to towns along Mississippi Sound or the Gulf of Mexico, all for private contractors or blacksmithing or domestic uses. No matter how long the railroad haul might be, nor how large the resulting revenues to the Louisville & Nashville Railroad Company, no rational person concerned in the shipment would claim for those free spotting and hoisting. These coals are not for export, and that is the end of the matter.

To repeat: (1) The Government and (2) other shippers are on the same footing by these tariffs, because constructively they pay the same rates between the same terminal points. But, to say the least, it is clear that they are on the same footing as regards the character of coals entitled to free spotting and hoisting; and therefore the Government is not entitled to the immunity with respect to coals not for export which the private owner and shippers can not claim. The effect of the decision then is that coals, whether for Government or for private account, though shipped for local and domestic uses, if paying in any way the stipulated minimum of shipping charges, shall go free of the spotting and hoisting charges.

It can not be said, to support the judgment on the terminal charges claimed, that the Government had two answers to the claim and that, one of those being held by this court to be good, it is of no consequence that no decision was made on the other. The Government had not two defenses, but one defense of two

interdependent parts, viz: (1) that the coals in question were a subject of the special tariffs invoked and (2) that, in legal effect, there were paid for this service the full rates stipulated in those tariffs. All that the court decided is that those rates were paid. This was immaterial and did not justify a judgment in the Government's favor if the coals were not for export and the tariffs, offering free switching and hoisting, did not apply.

Accepting as correct and final the decision that these coals were property of the Government while in transit, appellant submits that the frame of the judgment should be:

"The Government was substantially the owner of the freights and therefore was entitled to the land-grant abatements stated in findings IX, XI, XII and XIII of the Court of Claims, totaling $12,609.18.

"Including said land-grant abatements, the rates accruing to appellant on said shipments were one dollar per ton or more; but the coals were shipped, by said use of the terminal appliances, to coastwise points, entirely for engineering uses, not for export, and therefore appellant was and is entitled to recover the amount of said transfer charges, also stated in said findings IX, XI, XII and XIII, totaling $3,571.19.

There is no question presented, under this motion, of a waiver by appellant of the terminal charges. It did concede the land-grant abatements in its bills but claimed, as bases, the full tariff rates undiminished by spotting-and-hoisting charges.

BENJAMIN CARTER,
Attorney for Appellant.